

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

1 Pre-MUR: 517
2 Date of Referral: April 13, 2011
3 Date of Notification: April 19, 2011
4 Date of Last Response: June 24, 2011
5 Date Activated: July 5, 2011
6
7 SOL: January 1, 2012
8 through October 15,
9 2016 (continuing)
10
11 **REFERRAL:** Internally Generated
12
13 **RESPONDENTS:** 2006 Committee to Elect Cynthia Rodriguez
14 Matthews to the 26th Congressional District and
15 Cynthia Rodriguez Matthews, in her
16 official capacity as treasurer
17
18 Cynthia Rodriguez Matthews
19
20 **RELEVANT STATUTES**
21 **AND REGULATIONS:** 2 U.S.C. § 431(2)
22 2 U.S.C. § 431(8)(A)(i)
23 2 U.S.C. § 431(9)(A)(i)
24 2 U.S.C. § 432(e)(1)
25 2 U.S.C. § 433(a)
26 2 U.S.C. § 434(a) and (b)
27
28 **INTERNAL REPORTS CHECKED:** Disclosure Reports
29
30 **FEDERAL AGENCIES CHECKED:** None
31

32 **I. INTRODUCTION**

33 The Commission referred this matter to the Enforcement Division of the Office of
34 General Counsel ("OGC") pursuant to Directive 6 to determine whether there is reason to
35 believe that the 2006 Committee to Elect Cynthia Rodriguez Matthews to the 26th
36 Congressional District and Cynthia Rodriguez Matthews, in her official capacity as treasurer,

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1 (the "Committee"), violated the Federal Election Campaign Act of 1971, as amended ("the
2 Act"), by: (1) failing to file disclosure reports; (2) improperly disposing of the \$67,070
3 remaining cash-on-hand disclosed in its last filed report (the 2006 Year-End Report); and (3)
4 whether there is reason to believe that Cynthia Rodriguez Matthews, in her personal capacity,
5 violated the Act by failing to file a Statement of Candidacy and register an authorized
6 campaign committee in connection with her 2008 candidacy for Congress. We recommend
7 that the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(a)
8 and (b), and that Cynthia Rodriguez Matthews violated 2 U.S.C. § 432(e)(1), and that the
9 Commission approve an investigation, including the use of compulsory process.

10 **II. FACTS**

11 The Committee was the authorized campaign committee of Cynthia Rodriguez
12 Matthews for the 2006 election for the Congressional seat in the 26th Congressional District
13 of California. Although the Committee has never filed a request to terminate, it ceased filing
14 disclosure reports with the Commission after filing its 2006 Year-End Report on January 31,
15 2007. In that report, the Committee reported cash-on-hand of \$67,070, which exceeded its
16 reported outstanding debts and obligations of \$15,837. Despite this significant amount of
17 remaining cash, the Committee has never disclosed how it disposed of those remaining funds
18 and has failed to respond to 18 consecutive Non-Filer Notifications sent by the Reports
19 Analysis Division ("RAD"). RAD and OGC's General Law & Advice Division ("GLA")
20 have made attempts to obtain additional information about the Committee's activities since
21 the time period covered by the 2006 Year End Report, but none of these attempts has been
22 successful.

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Rodriguez Matthews' name also appeared on the primary ballot in the 2008 Democratic primary for the 26th Congressional District of California. She received 32.6 percent of the vote and lost the election. Notwithstanding her apparent candidacy, she never filed a Statement of Candidacy, and no Statement of Organization or disclosure reports were filed in connection with her 2008 campaign. Prior to this Referral, GLA attempted to obtain information from the Committee about the 2008 candidacy, but the Committee failed to respond.

On April 7, 2011, the Commission referred the matter to OGC's Enforcement Division pursuant to Directive 6. *See* Certification dated April 7, 2011 in AT 10-01. *See also* Memorandum to the Commission dated March 25, 2011 in AT 10-10, attached hereto as Attachment 1. On April 18, 2011, OGC notified Respondents of the referral pursuant to the Commission's Agency Procedures to Respondents in Non-Complaint Matters, dated August 4, 2009. The notification letter specified:

Based on information available to the Commission, it appears the Committee stopped regularly filing with the Commission after its 2006 Year-End Report. Its 2006 Year-End Report indicated it had \$67,070 cash-on-hand and \$15,837 in outstanding debts and obligations. The Committee has not filed a termination report, and it has failed to respond to fourteen consecutive Non-Filer Notifications, as well as a previous request by the Office of General Counsel (attached). Further, we noted that your name appeared on the ballot in the 2008 Democratic primary for the 26th Congressional District of California, but you neither registered a subsequent committee with the Commission nor disclosed any activity associated with that election.

The notification letter further stated that "the Commission's Office of the General Counsel is reviewing this information in connection with making a recommendation to the Commission as to whether there is reason to believe that the Committee and you, individually and in your capacity as treasurer, violated the Act."

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1 Rodriguez Matthews requested and received a 30-day extension to respond to the
2 Referral notification, making her response due on June 6. OGC subsequently granted a further
3 extension until June 24 and informed the Respondents that a tolling agreement would be
4 required if any further extensions were requested.

5 On Friday, June 24, Rodriguez Matthews sent OGC a letter but it contained no
6 substantive response to the allegations. Rather, Rodriguez Matthews asserted that the letters
7 she had received from OGC were "vague in nature" and that "when we requested
8 clarification, you refused to answer with any specificity." She claimed that neither she nor
9 the Committee's accountant had attempted to "side skirt this matter at any time" and had
10 "always maintained contact in an attempt to provide you with what you needed," but "we
11 cannot provide you information, without knowing what it is you are reviewing." She
12 declined to sign the tolling agreement without first consulting counsel, which she said she
13 would do on Monday, June 27.¹ OGC has received no further communication from
14 Respondents.

15 **II. LEGAL ANALYSIS**

16 **A. Committee**

17 Each treasurer of an authorized committee of a candidate must file reports or receipts
18 and disbursements in accordance with 2 U.S.C. § 434(a) disclosing the information set forth
19 in 2 U.S.C. § 434(b), including any amounts transferred to other committees authorized by
20 the candidate. 2 U.S.C. § 434(b)(4)(B). Despite receiving 18 Non-Filer notices, the
21 Committee has not filed any disclosure reports since the 2006 Year End Report, which was

¹ On June 28 OGC sent Rodriguez Matthews an additional letter confirming that it had received no requests for information from her, or her counsel, but, in order to give her an additional opportunity to file a response, OGC informed her that no action would be taken on the matter until close of business on July 1.

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1 filed on January 31, 2007. Further, because the Committee's last filed report disclosed cash-
2 on-hand of \$67,070, it is apparent that the Committee also has failed to continually report its
3 cash-on-hand, and any disbursements it made using that cash-on-hand. Nor has the
4 Committee ever filed a termination request. Therefore, it appears that the Committee
5 violated 2 U.S.C. § 434(a) and (b) by failing to file disclosure reports containing information
6 about its activity from December 31, 2006 to the present. Accordingly, we recommend that
7 the Commission find reason to believe that the 2006 Committee to Elect Cynthia Rodriguez
8 Matthews to the 26th Congressional District and Cynthia Rodriguez Matthews, in her official
9 capacity as treasurer, violated 2 U.S.C. § 434(a) and (b).

10 **B. Cynthia Rodriguez Matthews**

11 An individual becomes a candidate for federal office when he or she has received
12 contributions or made expenditures in excess of \$5,000. 2 U.S.C. § 431(2).² The Act requires
13 each candidate for federal office to file a Statement of Candidacy and designate in writing a
14 political committee to serve as the principal campaign committee of such candidate no later than

² Ballot access fees payable toward the "in excess of \$5,000 in expenditures" threshold for "candidate" status under section 431(2). Under the Act and the Commission's regulations, a "contribution includes neither payments made by a candidate or authorized committee of a candidate as a condition of ballot access, nor payments received by any political party committee as a condition of ballot access." 2 U.S.C. § 431(8)(B)(xii) and 11 C.F.R. § 100.90. In addition, an expenditure does not include payments received by a political party committee from candidates or their authorized committees as a condition of ballot access that are transferred to another political party committee or the appropriate State official. 2 U.S.C. § 431(9)(B)(x) and 11 C.F.R. § 100.150. However, the Act does not exclude from the definition of expenditure payments made by the candidate or the candidate's authorized committee for ballot access fees; thus, an authorized committee must report such payments as expenditures pursuant to 2 U.S.C. § 434(b). Since Congress excluded ballot access payments made by a candidate or authorized committee from the definition of "contribution" but did not include a similar exclusion from the definition of an "expenditure," and since "it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion," *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)), ballot access fees paid by a federal candidate or authorized committee are expenditures under the Act. Additionally, under the Commission's "testing the waters" regulations, payments made by an individual to qualify for the ballot under State law are not excluded from the definition of an "expenditure." 11 C.F.R. § 100.131(b)(5). See MUR 6315 (Alvin M. Greene) Factual & Legal Analysis at 4-5.

1 15 days after becoming a candidate. 2 U.S.C. § 432(e)(1); 11 C.F.R. § 101.1(a). Each
2 authorized campaign committee must file a statement of organization no later than 10 days after
3 designation, pursuant to section 432(e)(1), and thereafter file reports with the Commission.
4 2 U.S.C. §§ 433, 434.

5 Our attempts to obtain additional information directly from the Respondents about
6 their activities from December 2006 to the present have been unsuccessful, and the only
7 information we have about Rodriguez Matthews' political activity during that time period is
8 that she was a 2008 candidate for a seat in the House of Representatives from California's
9 26th Congressional District, she paid \$1,652 to the State of California to have her name
10 placed on the primary election ballot for that race, and she lost that election with 32.6 percent
11 of the vote. See Administrative Termination Referral Memorandum dated March 25, 2011,
12 at Attachments 4 and 5. See also
13 http://www.sos.ca.gov/elections/election_2008/4_4_certified_list_of_candidates.pdf, and
14 http://www.sos.ca.gov/elections/sov/2008_primary_june/us_reps08primary.pdf. Since
15 Rodriguez Matthews received close to a third of the votes in the primary, it seems likely that
16 she made additional expenditures and received contributions or other monies during the 2008
17 campaign, including possible transfers from the Committee's remaining cash-on hand, that
18 would cause her to exceed one or both of the \$5,000 candidate thresholds, thereby triggering
19 her reporting obligations.

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Accordingly, we recommend that the Commission find reason to believe that Cynthia Rodriguez Matthews violated 2 U.S.C. § 432(e)(1) by failing to file a Statement of Candidacy for her 2008 campaign.³

V. RECOMMENDATIONS

1. Open a MUR.
2. Find reason to believe that the 2006 Committee to Elect Cynthia Rodriguez Matthews to the 26th Congressional District and Cynthia Rodriguez Matthews, in her official capacity as treasurer, violated 2 U.S.C. § 434(a) and (b);

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3. Find reason to believe that Cynthia Rodriguez Matthews violated 2 U.S.C. § 432(e)(1) in connection with her 2008 campaign for Congress;
4. Authorize the use of compulsory process in this matter, including the issuance of interrogatories, document subpoenas and deposition subpoenas;
5. Approve the attached Factual and Legal Analysis;
6. Approve the appropriate letter.

Date November 2, 2011

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